

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 13, 2005

D045847 People v. Barraza

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 33(c)(5) and 17. The appeal is dismissed.

D041343 People v. Rossum

The judgment is modified by striking the parole revocation restitution fine under section 1202.45. The trial court is ordered to strike the fine under 1202.45 from the minutes of the sentencing hearing. As so modified, the judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

D043118 People V. Rossum

The petition is denied.

D045164 People v. Andrade

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., McDonald, J.

D045008 Barken v. CBIZ Special Risk Insurance Services Inc., et al.

The orders granting summary adjudication in favor of CBIZ on the first and fifth causes of action of Barken's cross-complaint and the order denying Barken's motion to amend his cross-complaint to substitute defendants for Does one through seven are affirmed. Accordingly, the judgment is affirmed. CBIZ is awarded costs on appeal. O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

D044560 People v. Morales

The matter is remanded to the trial court with directions to modify the judgment to reflect that the sentence on count two is stayed under section 654, and as so modified, the judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

D044301 People v. Robert C.

The trial court's order preventing Robert from owning or possessing firearms for five years pursuant to section 8103, subdivision (f)(1) is reversed. The case is remanded to the trial court with directions to enter a new order that Robert may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase firearms pursuant to section 8103, subdivision (f)(1). Aaron, J.; We Concur: McConnell, P.J., Huffman, J.

D045091 Electronic Waveform Lab, Inc. v. Home Medical Services, Inc.

The judgment for costs is affirmed. Costs on appeal to HMS. Huffman, J.; We Concur: McConnell, P.J., Aaron, J.

D044322 People v. Baumer

The judgment is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

D044138 People v. Anzalone

The judgment as to counts 2 through 4 is reversed. The judgment is affirmed as to all other counts.

CERTIFIED FOR PARTIAL PUBLICATION

Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 13, 2005 (Continued)

D046100 In re Evans on Habeas Corpus

For good cause shown the respondent is ordered to show cause why the relief requested should not be granted. In addition to the papers on file, the respondent may file a return on or before July 18, 2005, and petitioner may file a traverse on or before August 22, 2005. Absent a request by the parties on or before August 29, 2005, oral argument will be deemed waived.

The court requests the return and traverse include briefing on the following issue: whether the Board of Prison Terms, in determining a prisoner's suitability for parole, may consider the prisoner's involvement in a crime for which the prisoner was given transactional immunity.

Appellate Defenders, Inc., is directed to recommend counsel for appointment to represent petitioner in the above-captioned matter within 10 days of the date of this order. The Clerk of the Court shall forward copies of the petition, informal response and reply to Appellate Defenders with this order.

D044907 Rider et al. v. City of San Diego

The judgment is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

Clerk: D. E. Moore

D045679 In re Daniel P., a Juvenile

Cause called on merits. Suzanne Evans, Esq. argued for appellant. Gary Seiser, Deputy County Counsel argued for respondent. M. Elizabeth Handy, Esq. argued for the minor. Ms. Evans replied. Cause submitted.

Court recessed at 9:26 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

D044321 People v. Zavala

Cause called on merits. Ward Clay, Esq. argued for appellant. Bob Foster, Deputy Attorney General argued for respondent. Cause submitted.

D044801 Paulson v. Paulson

Cause called on merits. David Nelson, Esq. argued for appellant. Maureen F. Hallahan, Esq. was present in oral argument, but did not argue. Kathryn Karcher, Esq. argued for respondent. Barbara J. Orr, Esq. was present in oral argument, but did not argue. Mr. Nelson replied. Cause submitted.

D043795 County of San Diego v. Anderson et al.

Cause called on merits. Janis L. Turner, Esq. argued for appellant. Thomas D. Bunton, Deputy County Counsel argued for respondent. Ms. Turner replied. Cause submitted.

Court recessed at 10:17 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 13, 2005 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Alex McDonald
Clerk: D. E. Moore

D045372 Mathews v. Mathews

Cause called on merits. Edward Castro, Esq. argued for appellant. Cause submitted.

D043345 People v. Castanon

D044649 In re Castanon on Habeas Corpus

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant. Christopher Beesley, Certified Law Student argued for respondent. Mr. Ford replied. Cause submitted as to appeal ONLY, D043345.

D043723 Friskopp v. Silverstein

Cause called on merits. John L. Dodd, Esq. argued for appellant. Shannon Minter, Esq. argued for respondent. Mr. Dodd replied. Cause submitted.

D043154 Brown Field Aviation Park, LLC v. PB Aviation, Inc.

Cause called on merits. John B. Clark, Esq. argued for appellant/cross-respondent, PB Aviation, Inc. Bryan C. Vess, Esq. argued for respondent/cross-appellant, and submitted a visual aid to the court. Richard H. Benes, Esq. was present in oral argument, but did not argue. Mr. Clark replied. Mr. Vess replied on the cross appeal. Cause submitted.

Court recessed at 3:25 p.m. until Tuesday, June 14, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 14, 2005

D043769 People v. Burns

D045716 In re Burns on Habeas Corpus

Petitioner's and appellant's motion to consolidate the pending petition for writ of habeas corpus, *In re Nelson Burns*, D045716, with the pending appeal, *People v. Nelson Christopher Burns*, D043769, for consideration and disposition, is granted.

D046011 In re Kevin T., a Juvenile

The appeal is dismissed pursuant to California Rules of Court, rule 33(c)(5) and 17.

D046573 In re Henderson on Habeas Corpus

The petition is denied without prejudice to refile with the Court of Appeal, Second Appellate District, 303 South Spring Street, Los Angeles, CA 90013. The clerk is directed to retain one copy of the petition for our records and to return the original petition and all other copies to Henderson so he may file them in the Second Appellate District.

D044334 People v. Ysiano

D044336 People v. Ysiano

(Consolidated) The judgment is affirmed. Irion, J.; We Concur: O'Rourke, Acting P.J., Aaron, J.

D044994 People v. Carman

The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D046031 Regina P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Nares, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D043933 Horning v. Shilberg

The judgment is affirmed. Irion, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J. CERTIFIED FOR PUBLICATION.

D045979 In re Mellissa Z., a Juvenile

The petition is denied. McIntyre, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D044945 People v. Schmaldientst

The judgment is affirmed. Nares, Acting P.J., We Concur: Haller, J., O'Rourke, J.

D044409 Parker v. First American Title Insurance Company

Judgment affirmed. Respondent to recover its costs. Benke, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D042817 Western Pet Wholesalers, Inc. v. Natura Pet Products Inc., et al.

The Court has received the stipulation for partial dismissal of the above-entitled appeal. The notices of appeal filed by James R. Balsimo and Quality Pet Products-CA, Inc. and the cross-appeal filed by Western Pet Wholesalers, Inc. as to James R. Balsimo and Quality Pet Products-CA, Inc. only are dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 14, 2005 (Continued)

D046466 Sonia U. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Sonia U. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

Court convened at 9 a.m.

Present: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion
Clerk: D. E. Moore

D043270 People v. Orozco

Cause called on merits. Susan K. Keiser, Esq. argued for appellant. Meagan Beale, Deputy Attorney General argued for respondent. Ms. Keiser replied. Cause submitted.

D043483 People v. Phillip

Cause called on merits. Jeffrey A. Needleman, Esq. argued for appellant. Carlos Campbell, Certified Law Student argued for respondent. Mr. Needleman replied. Cause submitted.

Court recessed at 9:37 a.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

D043383 Castaneda v. Olsher

Cause called on merits. Lowell F. Sutherland, Esq. argued for appellant. Kim L. Nguyen, Esq. argued for respondent. Mr. Sutherland replied. Cause submitted.

Court recessed at 10:23 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Terry O'Rourke, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. Moore

D044215 Kindred Nursing Centers West, LLC v. California Health and Human Services Agency

Cause called on merits. James Napoli, Esq. argued for appellant. Philip J. Matsumoto, Esq. argued for respondent. Carolyn Riley, Esq. was present in oral argument for real party in interest, Kashaninia, but had no argument. Mr. Napoli replied. Cause submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 14, 2005 (Continued)

D043963 People v. Williams

D045974 In re Williams on Habeas Corpus

Cause called on merits. Carl Fabian, Esq. argued for appellant. Janelle Boustany, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted as to D043963 only.

D043610 Calenergy Minerals, LLC v. AMEC E&C Services, Inc.

Cause called on merits. Karen Elizabeth Walter, Esq. argued for appellant. Edward B. Lozowicki, Esq. argued for respondent. Ms. Walter replied. Cause submitted.

D044386 Cantor v. Nichols Institute Diagnostics, Inc.

Cause called on merits. Helen Irza, Esq. argued for appellant. Daniel C. Minter, Esq. argued for respondent. Ms. Irza replied. Cause submitted.

Court recessed at 3:18 p.m. until Wednesday, June 15, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 15, 2005

D045307 People v. Bruton

The judgment is affirmed. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D045215 People v. Sindelar

D046008 In re Sindelar on Habeas Corpus

The petition for writ of habeas corpus , In re Kristi K. Sindelar, D046008, is consolidated with the pending appeal, People v. Sindelar, D045215, for disposition.

D045215 People v. Sindelar

D046008 In re Sindelar on Habeas Corpus

The convictions and sentence are affirmed except the restitution orders to the victims and credits for time served are vacated. The matter is remanded for oral rulings and amended minutes and abstracts of judgments accurately reflecting the oral rulings on victim restitution and credit for time served. The trial court shall forward copies of the amended abstracts of judgments to the Department of Corrections. Because the trial court will clarify the restitution order on remand, the petition for writ of habeas corpus is dismissed as moot. McDonald, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D043483 People v. Phillip

The judgment is affirmed. Irion, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J.

D044442 In re Marriage of McClellan

The opinion filed May 25, 2005, is ordered certified for publication.

D045374 Chapman et al. v. Superior Court of San Diego County/Malcolm

The petition is granted. Let a writ of mandate issue directing the superior court to vacate its October 5, 2004 order and issue a new order granting the Port District and Chapman summary judgment. The Port District and Chapman are entitled to costs in this proceeding. CERTIFIED FOR PUBLICAITON. McConnell, P.J.; We Concur: Nares, J., O'Rourke, J.

D045460 People v. Zamora

The judgment is affirmed. Benke, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D043645 People v. Hayes

The judgment is affirmed. Huffman, Acting P.J.; I Concur: McIntyre, J.;
Dissenting Opinion: McDonald, J.

D043825 Zampetti et al. v. Taylor

Petition for rehearing is denied.

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Alex McDonald
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 15, 2005 (Continued)

D045067 Adoption of Joshua S., a Minor

Cause called on merits. John L. Dodd, Esq. argued for appellant, Sharon S., and submitted an additional authority in oral argument. Charles A. Bird, Esq. argued for respondent, Annette F. Mr. Bird replied. Cause submitted.

Court recessed at 9:35 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

D043134 People v. Haygood

Cause called on merits. Robert E. Boyce, Esq. argued for appellant. Pat Zaharopoulos, Deputy Attorney General argued for respondent. Mr. Boyce replied. Cause submitted.

D045102 People v. Crowell

Cause called on merits. Nicholas De Pentto, Esq. argued for appellant. Daniel Kawamoto, Certified Law Student argued for respondent. Cause submitted.

Court recessed at 10:20 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald
Clerk: D. Moore

D045073 In re Azul C., a Juvenile

Cause called on merits. Michael D. Randall, Esq. argued for appellant, Jorge C. Karen Dodd, Esq. argued for appellant, Perla T. Katherine Bird, Deputy County Counsel argued for the respondent. M. Elizabeth Handy, Esq. argued for the minor. Mr. Randall replied. Ms. Dodd replied. Cause submitted.

D044860 Schwab, et al. v. First State Insurance Company

Cause called on merits. Brian Fredrick Zimmerman, Esq. argued for appellant. Emily Wehbe, Esq. argued for respondent. Mr. Zimmerman replied. Cause submitted.

D044569 Toyo De Baja California, Inc. v. Toyo Tire & Rubber Col Ltd., et al.

Cause called on merits. Robert Frank Scoular, Esq. argued for appellant. John Hamilton Stephens, Esq. argued for respondent. Mr. Scoular replied. Richard M. Segal, Esq. was present in oral argument, but did not argue. Cause submitted.

Court recessed at 2:52 p.m. until Tuesday, June 21, 2005 at 11 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 16, 2005

D044294 Woodridge Escondido Property Owners Association v. Nielsen

The opinion filed May 25, 2005, is certified for publication.

D044190 Tetzlaff v. Tri-City Healthcare District

Order affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

D043769 People v. Burns

D045716 In re Nelson Burns on Habeas Corpus

(Consolidated) The judgment is affirmed. The writ is denied. Haller, J.; We Concur: McConnell, P.J., Nares, J.

D045364 People v. Mookini

The judgment is affirmed. Irion, J.; We Concur: McDonald, Acting P.J., Aaron, J.

D043959 Snyder v. Gagnon

The order is affirmed. Costs are awarded to Snyder. Huffman, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D046563 In re Springfield on Habeas Corpus

The petition is denied.

D046140 In re Whitfield on Habeas Corpus

The petition is denied.

D046367 In re Springfield on Habeas Corpus

The petition is denied.

D046067 Ninkovic v. Charest

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 17, 2005

D045422 People v. Tewolde

Upon filing an abandonment of appeal, the appeal is dismissed.

D045826 In re Elijah J., a Juvenile

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., McIntyre, J.

D046067 Ninkovic v. Sharest

The petition is denied.

D045618 In re Tahani V., a Juvenile

Orders affirmed. Benke, J.; We Concur: McConnell, P.J., O'Rourke, J.

D046185 Vanessa M. et al. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

This court's order of June 7, 2005, dismissing the case as to Petitioner Ernest M., is VACATED.

The court construes Petitioner Ernest M.'s petition for extraordinary writ, received on June 14, 2005, as a challenge to the juvenile court's April 4, 2005 order setting a Welfare and Institutions Code section 366.26 hearing. The petition is inadequate in that it does not properly summarize the factual bases for the petition with citations to the record (item number 7 of petition) and provide supporting points and authorities (item number 8 of petition). Petitioner is granted 15 days from the date of this order to file an amended petition complying with California Rules of Court, rule 38.1. Failure to file a properly amended petition within the time specified will be deemed a waiver of the right to file a petition and will result in the dismissal of this case. Any amended petition filed after the 15 days will also be dismissed. Enclosed for Petitioner's information are copies of form JV-825 and Rule 38.1. Petitioner's request for appointment of counsel is denied.

The clerk of this court is directed to copy and mail to Petitioner a copy of the record in this case IMMEDIATELY and to mail a copy of this order and the petition to Petitioner's former counsel, Judith Klein.